

STATE OF MICHIGAN
COURT OF APPEALS

RHONDA COLLINS, Personal Representative of
the Estate of EDWARD COLLINS,

UNPUBLISHED
March 8, 2011

Plaintiff-Appellee,

v

DMC HOSPITAL PARTNERSHIP, HURON
VALLEY-SINAI HOSPITAL, CYNTHIA
BERNER, THOMAS SAIDOCK, DONALD
LAUHOFF and NICOLE MEIXNER,

No. 296052
Oakland Circuit Court
LC No. 2009-099072-NO

Defendants-Appellants.

Before: CAVANAGH, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order granting plaintiff's motion for voluntary dismissal, without prejudice, to enable her to join her state claims in a related pending action in federal court. We affirm.

This action arises from the death of plaintiff's decedent on July 6, 2008, while he was being transported by ambulance to defendant Huron Valley-Sinai Hospital. Paramedics notified the hospital's emergency room that security personnel would be necessary to assist in restraining the decedent because of his highly agitated and combative state. When the decedent arrived at the hospital, he was attended to by defendants Cynthia Berner and Thomas Saidock, who are nurses at the hospital, and by two security officers, defendants Donald Lauhoff and Nicole Meixner. The individual defendants attempted to restrain the decedent in the emergency room. The decedent thereafter went into cardiac arrest and resuscitation efforts failed. Following an autopsy, the county medical examiner determined that the decedent died from excessive pressure exerted on his chest, causing death by asphyxiation. Plaintiff thereafter brought this action in state court, alleging claims for assault and battery, negligence, false arrest or imprisonment, intentional infliction of emotional distress, and failure to "train/supervise/hire" against the hospital. Plaintiff also brought a separate action against the same defendants in federal court, alleging that defendants violated the decedent's constitutional rights, contrary to 42 USC 1983 and 42 USC 1988.

In October 2009, defendants moved for summary disposition under MCR 2.116(C)(10), arguing, inter alia, that there was no genuine issue of fact whether defendants' alleged conduct was the proximate cause of the decedent's death. Defendants also moved for dismissal on the ground that plaintiff's action sounded in medical malpractice and, therefore, plaintiff was required to comply with the pre-suit and affidavit-of-merit requirements applicable to a medical malpractice action. See MCL 600.2912b and MCL 600.2912d. The motions were scheduled to be heard on January 13, 2010. On December 30, 2009, plaintiff moved to voluntarily dismiss her complaint without prejudice pursuant to MCR 2.504(A), to allow her to join the state claims in her related federal action pursuant to the federal court's supplemental jurisdiction under 28 USC 1367. Defendants opposed the motion, arguing that plaintiff's principal motive was forum shopping. The trial court granted plaintiff's motion.

Defendants argue on appeal that the trial court erred in granting plaintiff's motion for voluntary dismissal. We disagree. We review the trial court's decision for an abuse of discretion. *McKelvie v Mt Clemens*, 193 Mich App 81, 84; 483 NW2d 442 (1992). An abuse of discretion occurs when the court's decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

MCR 2.504(A) governs voluntary dismissal of an action. MCR 2.504(A)(1) allows dismissal without a court order when the parties stipulate to dismissal or when the plaintiff dismisses an action before the adverse party serves an answer. Otherwise, "an action may not be dismissed at the plaintiff's request except by order of the court on terms and conditions the court deems proper." MCR 2.504(A)(2); *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 570; 525 NW2d 489 (1994). Dismissal under this subrule is without prejudice unless the order indicates otherwise. MCR 2.504(A)(2)(b). In deciding whether to grant a request for voluntary dismissal, "the trial judge is to weigh the competing interests of the parties along with any resultant inconvenience to the court from further delays." *African Methodist Episcopal Church v Shoulders*, 38 Mich App 210, 212; 196 NW2d 16 (1972). The trial court should consider the interests of the parties, the inconvenience to the court that would result from further delays, and the goal of protecting defendants from abuse. *Id.* at 212.

Plaintiff sought voluntary dismissal for the purpose of allowing her to join her state claims in her related federal court case pursuant to the federal court's supplemental jurisdiction to hear all claims so related to a claim for which the federal court has original jurisdiction that they form part of the same case or controversy. 28 USC 1367(a). Although defendants argue that joinder would not promote the interests of judicial economy because discovery had been completed and plaintiff waited until after defendants filed their motion for summary disposition to seek involuntary dismissal, we do not believe that any delay caused by granting plaintiff's motion would so inconvenience the parties as to render the trial court's decision an abuse of discretion.

We are also not persuaded by defendants' argument that plaintiff's principal motive for seeking voluntary dismissal was to obtain a more favorable forum for addressing her claims and that, as a result, the trial court abused its discretion in granting plaintiff's motion. The goal of protecting a defendant from abusive tactics is a proper consideration in deciding whether to grant a motion for voluntary dismissal without prejudice. *African Methodist Episcopal Church*, 38 Mich App at 212. Under *Erie R Co v Tompkins*, 304 US 64; 58 S Ct 817; 82 L Ed 1188 (1938),

a federal court would be required to apply state substantive law to plaintiff's state claims. *Biegas v Quickway Carriers, Inc.*, 573 F3d 365, 374 (CA 6, 2009); *Chin v Chrysler LLC*, 538 F3d 272, 278 (CA 3, 2008); *In re Lewis*, 845 F2d 624, 628 (CA 6, 1988). However, defendants also sought summary disposition on the ground that plaintiff's action was actually one for medical malpractice and, therefore, was subject to the procedural requirements of MCL 600.2912b and 600.2912d. State claims in federal court are subject to federal procedural law. *Biegas*, 573 F3d at 374.

In arguing that plaintiff is engaging in improper forum shopping, defendant cites *Long v Adams*, 411 F Supp 2d 701, 707 (ED Mich, 2006), in which the court held that the affidavit of merit requirement in MCL 600.2912d is a state procedural requirement that is not binding on federal courts. Defendant argues that, to the extent that plaintiff's state claims are properly treated as ones for medical malpractice, transferring the case to federal court could allow plaintiff to avoid the state procedural requirements that would otherwise apply to her action if it had remained in state court. We are not persuaded by defendant's argument as it is wholly based on speculation. To begin, it is not yet settled whether plaintiff's claim will be treated as a medical malpractice cause of action. As the action currently stands, the medical malpractice pleading requirements are irrelevant. Furthermore, even if the federal district court ultimately holds that this action is properly characterized as a medical malpractice action, it does not follow that plaintiff will necessarily be able to avoid the Michigan pleading requirements. It has been established that a federal district court opinion "is not binding precedent on any court." *US v One TRW, Model M14, 7.62 Caliber Rifle*, 441 F3d 416, 423 n 10 (CA 6, 2006). Consequently, defendant's assertion that *Long* will enable plaintiff to avoid Michigan law is merely an assumption. In further demonstration of this point, in *Lee v Putz*, WL 1791304 (WD Mich, 2006), a federal district court rejected *Long*, holding that the *Long* court erroneously determined that MCL 600.2912d was a procedural rule in conflict with FR Civ P 8(a). The court in *Lee* also held that when a medical malpractice action is filed in state court and removed to federal court, the requirements of MCL 600.2912b and 600.2912d cannot be waived because they governed the case at the time it was filed.

Defendant has failed to establish that the voluntary dismissal of this matter will hinder judicial economy or that it constitutes an improper attempt to forum shop. Consequently, we cannot conclude that the trial court abused its discretion in granting the motion.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause